IN THE HIGH COURT OF DELHI

Crl.M.C. No.2386/2001

Directorate of Revenue Intelligence ..... Petitioner

VERSUS

$ Kumarpal ..... Respondent

Crl.M.C. No.3064/2003

Directorate of Revenue Intelligence ..... Petitioner

VERSUS

$ Makhtool & Anr. ..... Respondent

Crl.M.C. No.3112/2003

Directorate of Revenue Intelligence ..... Petitioner

VERSUS

$ Sardul Singh & Anr. ..... Respondent

Crl.M.C. No.3436/2003

Directorate of Revenue Intelligence ..... Petitioner

VERSUS

$ Nirmal Singh ..... Respondent

! Present : Mr.Satish Aggarwala, Ms.Pooja Bhaskar and Mr.S.Aggarwala for the petitioner. Mr.H.S.Bhullar for the respondent.

% DATE OF DECISION: 09.10.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. At the outset, it may be noted that after some arguments, learned counsel for the petitioner stated that the petitioner abandons challenge to the orders impugned in the above captioned petitions but want a clarificatory order passed by this Court. Clarificatory order being that the proceedings conducted before the learned Metropolitan Magistrate would be preserved and the Court in which the complaint would be re-filed would proceed from the stage matter had reached in the Court of the learned Metropolitan Magistrate, Delhi.

2. Learned counsel for the respondent states that since petitioner is now conceding that the order impugned in the petitions is a valid order, since learned Metropolitan Magistrate has held that Courts at Delhi did not have jurisdiction over the matter and hence returned the complaint, to be filed in the Court of competent jurisdiction proceedings conducted at Delhi cannot be preserved.

3. Pertaining to Crl.M.C.No.2386/2001, relevant facts are that in the year 1988 the officers of Directorate of Revenue Intelligence intercepted a goods transport vehicle being truck

No.URR-1543 near Hodal, UP–Haryana border. The truck was brought to the office of the Directorate of Revenue Intelligence at CGO Complex, Lodhi Road and on examination goods, stated to be smuggled goods were seized.

4. Alleging violation of the provisions of the Customs Act, a complaint was filed in the Court of Chief Metropolitan Magistrate in the year 1989. Cognizance thereof was taken. Summoning order was issued. Accused persons participated in the proceedings without demur till 17.10.2000. In the interregnum pre-charge evidence was recorded.

5. On 17.10.2000 an application was filed seeking recall of the order taking cognizance of the complaint on the ground that no part of cause of action accrued at Delhi. That the truck stated to be loaded with smuggled goods was intercepted and seized outside the territorial jurisdictions of the Union Territory of Delhi.

6. Learned Metropolitan Magistrate concurred and ordered the complaint to be returned to the petitioner with liberty of filing the same in the Court of competent jurisdiction as per law.

7. Pertaining to Crl.M.C. No.3064/2003, the interception of the accused persons took place at Ghaziabad (UP). They were escorted to the office of Directorate of Revenue Intelligence, CGO

Complex, Lodhi Road, New Delhi. Contraband goods being gold biscuits were allegedly recovered during search at Delhi.

8. Alleging violation of the provisions of the Customs Act, complaint was filed before the learned Additional Chief Metropolitan Magistrate at Delhi. Cognizance thereof was taken in the year 1990. Accused persons were summoned. Pre-charge evidence was recorded. Application was thereafter filed challenging the jurisdiction of the Courts at Delhi. Vide order dated 12.3.2001, learned Additional Chief Metropolitan Magistrate directed return of the complaint to be filed in the concerned Court having territorial jurisdiction.

9. Pertaining to Crl.M.C. No.3112/2003, the motor vehicle in question was intercepted at Sirsa. It was escorted to the office of Directorate of Revenue Intelligence, CGO Complex, Lodhi Road, New Delhi. Search is stated to have yielded gold biscuits.

10. Alleging violation of the provisions of the Customs Act, complaint was filed before the learned Additional Chief Metropolitan Magistrate, Delhi in the year 1990. Accused persons were summoned. Pre-charge evidence commenced. Midway between an application was filed challenging the territorial jurisdiction of the Courts at Delhi. Vide order dated 22.2.2001, the complaint was directed to be returned for re-filing in the Court of competent jurisdiction.

11. Pertaining to Crl.M.C. No.3436/2003, the truck in question being truck No.DIG–3677 was intercepted on 5.2.1989 at Shahpura on Delhi–Jaipur road, outside the territorial jurisdiction of the Union Territory of Delhi. They were escorted to the office of Directorate of Revenue Intelligence, CGO Complex, Lodhi Road, New Delhi. On rummaging gold biscuits were allegedly recovered.

12. Alleging violation of the provisions of the Customs Act, complaint was filed on 4.7.1989 before the learned Additional Chief Metropolitan Magistrate at Delhi. Taking cognizance, learned Additional Chief Metropolitan Magistrate, Delhi summoned the accused. Pre-charge evidence was recorded from time to time. In November 2000 an application was filed questioning the territorial jurisdiction of the Courts at Delhi. Vide order dated 22.2.2001, learned Additional Chief Metropolitan Magistrate returned the complaint, to be filed in the Court having territorial jurisdiction.

13. Chapter XIII of the Code of Criminal Procedure 1973 deals with jurisdiction of the criminal courts in inquiry and trials. Section 177 reads as under:-

> "**177. Ordinary place of inquiry and trial.**– Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed."

14. A bare perusal of Section 177 of the Code of Criminal

Procedure 1973 makes it clear that ordinarily, every offence has to be inquired into and tried by a Court within whose local jurisdiction the offence was committed.

15. As observed by Blackstone: 'All crime is local, the jurisdiction over the crime belongs to the country where the crime is committed'.

16. As explained by the Supreme Court in the decision reported as AIR 1961 SC 1589 *Purushottam Das Dalmiya vs. State of West Bengal*, AIR 1961 SC 1601 *L.N.Mukherjee vs. State of Madras*, AIR 1963 SC 1620 *Banwari Lal Jhunjhunwala vs. UOI*, the word used in Section 177 of the Code of Criminal Procedure 1973 is '*ordinarily*'. The said use of the word indicates that the provision is a general one and has to be read subject to the special provisions contained in the Code of Criminal Procedure 1973. Meaning thereby that the exception implied by the word 'ordinarily' need not be limited to those specifically provided for by the law, for example Sections 181 to 184 of the Code of Criminal Procedure 1973.

17. In *Purushottam Das's* case (supra) in para 15 it was observed as under:-

> “15. It is further significant to notice the difference in the language of S.177 and S.233. Section 177 simply says that ordinarily every offence would be tried by a Court within the local limits of whose jurisdiction it was committed. It does not say that it would be tried by such Court

except in the cases mentioned in Ss.179 to 185 and 188 or in cases specially provided by any other provision of law. It leaves the place of trial open. Its provisions are not peremptory. There is no reason why the provisions of Ss.233 to 239 may not also provide exceptions to S.177, if they do permit the trial of a particular offence along with others in one Court. On the other hand, S.233, dealing with the trial of offences, reads:

> "For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in Ss.234, 236 and 239."

The language is very peremptory. There is a clear direction that there should be a separate charge for every distinct offence and that any deviation from such a course would be only in cases mentioned in Sections 234, 235, 236 and 239."

18. Since learned counsel for the petitioner has conceded to the legality of the orders impugned, which have held that Courts at Delhi lacked territorial jurisdiction I need not expand on the issue of territorial jurisdiction in relation to the offences save and except to note that the legislature has evidenced the legislative intent not with relation to a language which would oust the jurisdiction of a Court not having the requisite territorial jurisdiction but has used a language with reference to the place where an offence would ordinarily be tried. This, in my mind would have a bearing on the question whether proceedings conducted by a Court having no territorial jurisdiction would be irregularly conducted proceedings or the proceedings would be a

nullity.

19. In relation to civil law, 3 kinds of jurisdiction are contemplated. The same are (a) pecuniary jurisdiction (b) territorial jurisdiction (c) jurisdiction over the subject matter. Whereas pecuniary and territorial jurisdiction are not treated as fundamental jurisdictions and are capable of being waived, jurisdiction over the subject matter is treated as going to the root of the competence of a Court and cannot be waived. Decision rendered by a Court lacking jurisdiction over the subject matter of the dispute is a nullity and can be questioned at any stage.

20. In criminal law, concept of pecuniary jurisdiction does not exist. Two kinds of jurisdictions are recognized under criminal law. The first is territorial jurisdiction and the second is jurisdiction over the subject matter.

21. As held in the decision reported as AIR 1957 *Punjab 86* *State vs. Abdul Hamid*, lack of territorial jurisdiction is only an irregularity, not an illegality to vitiate the proceedings, unless prejudice is caused. Lack of territorial jurisdiction does not render the proceedings null and void.

22. Section 462 of the Code of Criminal Procedure may be referred to at this stage. It reads as under:-

> "**462. Proceedings in wrong place.** – No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of

> which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."

23. Prima facie, proceedings in a Court lacking territorial jurisdiction would not render the proceedings void unless the erroneous exercise of jurisdiction has in fact occasioned a failure of justice.

24. In the decision reported as JT 2001 (7) SC 55 *State of M.P. vs. Bhooraji & Anr.*, the Supreme Court considered the scope and ambit of Section 462 of the Code of Criminal Procedure 1973.

25. With reference to the view taken by the High Court that the trial was vitiated on account of lack of jurisdiction by the Sessions Court and requiring trial to recommence de-novo, reversing the decision of the High Court, Supreme Court observed as under:-

> "13. It is useful to refer to Section 462 of the Code which says that even proceedings conducted in a wrong sessions division are not liable to be set at naught merely on that ground. However, an exception is provided in that Section that if the Court is satisfied that proceedings conducted erroneously in a wrong sessions division "has in fact occasion a failure of justice" it is open to the Higher Court to interfere. While it is provided that all the instances enumerated in Section 461 would render the proceedings void, no other proceedings would get vitiated *ipso facto* merely on the ground that the proceedings were erroneous. The court of appeal or revision has to examine specifically whether such erroneous steps had in fact occasioned failure of justice. Then alone the

> proceedings can be set aside. Thus the entire purport of the provisions subsumed in Chapter XXXV is to save the proceedings linked with such erroneous steps, unless the error is of such a nature that it had occasioned failure of justice."

26. It is apparent that the legislature was conscious of possible occurences in criminal courts of cognizance being taken in a wrong sessions division or a district or within areas. The legislature disfavoured the quashing of the proceedings and did not direct repetition of the whole proceeding afresh. Unless it was shown that the error has occasioned a failure of justice the proceedings were saved.

27. Learned counsel for the respondent has not been able to show as to in what manner a failure of justice has ensued as a result of Courts at Delhi taking cognizance of the complaint and proceeding ahead with the trial.

28. I may note at this stage that I have not considered the issue of acquiescence notwithstanding the fact that the accused persons chose to participate in the proceedings before the learned Metropolitan Magistrate at Delhi for 10 years before questioning the jurisdiction of the Court on ground of territorial jurisdiction.

29. The question, whether pertaining to territorial jurisdiction in relation to criminal offences principles of acquiescence would be attracted is thus left open.

30. I dispose of the petitions clarifying that as a consequence of the impugned orders, the Court of competent jurisdiction where complaints would be refiled would proceed from the stage matter had reached before the Court of the learned Metropolitan Magistrate, Delhi when on question of territorial jurisdiction being raised, finding in favour of the accused persons were given and complaints were returned to be re-filed in the Court of competent jurisdiction.

31. No costs.

October 9, 2007
dk

(PRADEEP NANDRAJOG)
JUDGE